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Application No.: 09/769,057

Attorney Docket No. 4754*39

Remarks

Claims 1, 3, 8, 9, 11, 13, 14, 18, 19, 21, 22, 30, 31 and 32 have been amended to define more clearly the Applicants' invention. Claims 1, 3 to 14 and 18 to 33 remain pending in the present application, and are believed to distinguish patentably over the prior art.

In the Final Office Action, the Examiner rejected claims 18 to 23 and 30 to 33 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner alleges that these claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Applicants respectfully disagree, and submit that the Examiner's objection in this regard is entirely inappropriate for the reasons set forth below.

In the specification, the upright handle 26 is described as being centrally affixed to the flat panel 24 by a *weld* (see page 5, lines 28 to 30). As will be appreciated, since the upright handle and the flat panel are secured together by a weld, relative movement between the handle and the flat panel is not permitted. The handle is also sized and shaped to pass easily through the hole 22 in the mould 12 (see page 6, lines 1 to 5). In fact, in the preferred embodiment, the hole 22 in the mould is circular and the handle is a solid cylinder (see page 5, line 30, and Figures 1 to 7). This allows the mould to move vertically along the upright handle as shown in Figures 1 and 2, and by virtue of the complementary shapes of the upright handle and hole 22 and their relative sizing, permits the mould to rotate about the handle. Since the handle and flat panel are securely affixed and inhibited from relative motion therebetween as a result of the weld, the mould necessarily is able to rotate relative to the handle and flat panel as claimed.

To further support the above, when a patty has been prepared, excess food is removed by running a finger 36 along the peripheral sidewall 20 (see page 6, lines 18 to 20, and Figure 5). As stated on page 7, lines 27 to 29 in the specification, during removal of excess food product, i.e. with the mould positioned as shown in Figure 5 so that the mould overlies the flat panel, the mould can be *rotated* to provide the smooth peripheral running surface. Since the handle and flat panel are affixed together by a weld, rotation of the mould as described on page 7 *must* be relative to the handle and the flat panel. Accordingly, Applicants respectfully submit that the specification clearly provides support for the claimed subject matter contrary to the Examiner's allegation that new matter has been added. Withdrawal of the Examiner's objection

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in this regard is therefore respectfully requested.

With respect to prior art, the Examiner has rejected claims 1, 8, 18, 21 and 31 to 33 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,765,029 to Rogan ("Rogan"). Claim 5 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Rogan in view of U.S. Patent No. 5,658,608 to Klefbeck ("Klefbeck"). Claim 6 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Rogan and Klefbeck in view of U.S. Patent No. 996,449 to Bodenstein ("Bodenstein").

Applicants thank the Examiner for indicating allowable subject matter in claims 3, 4, 7, 9 to 14, 19, 20, 22, 23 and 30. Applicants also thank the Examiner for allowing claims 24 to 29. Applicants however respectfully submit that all claims now pending in the present application distinguish patentably over the prior art and should be allowed.

According to one aspect of the Applicants' invention as defined by independent claim 1, Applicants provide a press for making a food patty including a mould in the form a disc and defining a weight. The disc has an opening therethrough and an outer exposed smooth peripheral sidewall. A carrying component has a substantially flat panel and a handle affixed to the panel. The flat panel has a generally planar surface to contact food product to be pressed into a patty. The handle is sized to pass through the opening to allow the disc to move along the handle. The disc is movable along the handle and positionable to overlie the flat panel thereby to facilitate the application of pressure to the food product. The peripheral sidewall defines a running surface over which an object can be run to remove food product extending therebeyond during formation of a food patty.

In contrast, Rogan discloses an adjustable food forming device for producing individual patties from food. The device includes a mould cup, which houses a patty ejector or a mould plate. A sleeve extends upwardly from the mould cup. A shaft extends upwardly from the mould plate within the sleeve. The height of the mould plate relative to the base of the mould cup determines the thickness of the patty to be produced. The height is determined by the arrangement of a key protruding from the wall of one of the shaft and sleeve that engages with one of a plurality of keyways provided in the other of the shaft and sleeve.

Klefbeck discloses a device for compacting, forming and separating material that includes a hollow housing scalable at one end by a removable cap. A cylindrical housing having a threading exterior is moveably mounted on the other end of the housing. A plurality of separating members are slidably positioned within the housing.

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Bodenstein discloses a food pressing apparatus having handle with a loop to facilitate gripping.

Applicants respectfully submit that independent claim 1 distinguishes patentably over the cited prior art, either alone or in combination. None of the cited references discloses a food press having a mould *in the form of a disc and defining a weight*, with the disc having an opening therethrough and an *outer exposed smooth peripheral sidewall defining a running surface over which an object can be run to remove food product extending therebeyond during patty formation*. The Rogan mould identified by the Examiner at reference number 1 defines an internal chamber in which a patty is formed. As a result, the Rogan mould is not in the form of a disc nor does it provide an outer exposed smooth peripheral surface over which an object can be run to remove food product extending beyond the peripheral sidewall. This is clearly contrary to Rogan who teaches to trap all of the food product within the mould during patty formation. Neither Klefbeck nor Bodenstein teaches or suggests such a food press as defined.

Accordingly, Applicants respectfully submit that independent claim 1 distinguishes patentably over the cited prior art and should be allowed. Since claims 3 to 7 and 18 to 20 depend, either directly or indirectly, from independent claim 1, which is deemed allowable, Applicants respectfully submit that these claims should also be allowed.

Independent claims 8 and 31 also define a press for making a food patty and similarly recite a weight member or disc having an outer running surface over which an object can be run to remove food product extending therebeyond during formation of a food patty. Accordingly, Applicants respectfully submit that these claims distinguish patentably over the cited prior art for the same reasons set forth above. Since claims 9 to 14 and 21 to 23 depend, either directly or indirectly, from independent claim 9, which is deemed allowable, Applicants respectfully submit that these claims should also be allowed. Since claims 32 and 33 depend, either directly or indirectly, from independent claim 30, which is deemed allowable, Applicants respectfully submit that these claims should also be allowed.

In view of the above, it is believed the application in order for allowance and action to that end is respectfully requested.

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Enclosed is a Petition for a Two-Month Extension of Time, along with a check for \$210.00 to cover the fee required under 37 CFR 1.17(a). Should any other fee be required before the Examiner may consider this paper, including a fee for a further extension of time, such extension is requested and the Director is authorized to charge the fee amount to Deposit Account 03-2775 (Connolly Bove Lodge & Hutz LLP).

Respectfully submitted,



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Enclosure

Petition for 2-Mo. Extension

Request for Continued Examination

\$595.00 check (RCE filing fee and 2-Mo. Extension – Small Entity)